IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1041 OF 1995

Rangrao Balu Ghandge .. Petitioner

Versus

Collector, Kolhapur & Ors. .. Respondents

Smt.Anjali Helekar for the petitioner

Mr.V.P.Malvankar, A.G.P.for respondents

CORAM: A.P.SHAH &
S.U.KAMDAR, JJ

DATED: 21ST SEPTEMBER, 2004

ORAL JUDGMENT (PER S.U.KAMDAR, J.):

1. The petitioner who was working in the Armed Forces has filed the present petition challenging the action on the part of the respondents of resumption of his land which was allotted to him on the ground of his services to the nation. He has further sought a direction in this Writ Petition that the said land should be restored back to him. Some of the material facts are as under:

2. The petitioner joined the Armed Forces sometime

in or about 30st August 1940 and participated in the IInd World War. He was released from the services on 3rd August 1946. The petitioner was a part of Maratha Life Infantry. Sometime in or about October 1947 the Government allotted a land bearing Survey no.48 (Gat No.59) to the petitioner and one Tukaram Ramchandra Gaikwad. The said grant was to be treated as an assessment free for a first period of 10 years and at the rate of 1/2 assessment for the next 5 years and at the end of 15 years the scheme provided that the petitioner would become an absolute owners. On December 10, 1968, a mutation entry was effected recording the name of the petitioner as allottee of the said land. According to the petitioner, the petitioner has complied with the terms of the said grant and thus on the expiry of period of 15 years from the date of the grant, petitioner has become an absolute owner in respect of the said land.

3. It is the case of the petitioner that the petitioner has been in continuous use and possession of the said land. On 24th February 1986

the Tahsildar passed an order inter alia giving a direction that the name of the petitioner should be deleted and in respect of the petitioner's name the name of the persons who were in cultivation should be included. Consequently, on 18th March 1986 the Mutation Entry No.21 was made by which the name of the petitioner was deleted and the name of the Government was added on the said land. By letter dated 15th October 1994 in reply to the petitioner's repeated request for copy of the order the Tahsildar informed the petitioner that the order dated 24th February 1986 is not available on record. It is the case of the petitioner that the said land which was resumed by the Government has been transferred to respondent no.4 to 7. The respondents have filed an affidavit in reply to the present petition and it has been stated therein that the petitioners had committed breach of mandatory conditions of the order of grant dated 24th May 1948 in as much as for a period 1948 to 1984 the petitioner never personally cultivated the land in question though it was allotted for his own personal cultivation. It is the case of the

respondent that therefore Tahsildar passed an order dated 24th February 1986 ordering dispossession of the petitioner from the said land.

4. After resumption of the land by the aforesaid order dated 24th February 1986 the same was earmarked for project affected persons and the land has been thereafter allotted to respondent no.4 to 7 by an order of the Collector dated 13th January 1994. In the aforesaid circumstances, the petitioner has filed the present petition for restoration of land in question and reallotment of the same to the petitioner.

5. The learned counsel appearing for the petitioner has pointed out that there was another similar Writ Petition in this Court being Writ Petition No.1213 of 1994. We have perused the record of the Writ Petition No.1213 of 1994. By an order and Judgment dated 12th March 2003, the Division Bench of this Court has disposed of the said Writ Petition by permitting the petitioner to pursue their representation pending with

authorities for allotment of the said land. In view of the said order passed by the Division Bench, we also permit the petitioner in the present case to make representation before the authorities for allotment of the necessary land if he so desires. The petitioner to make such representation within a period of 4 weeks from today. In an event such representation is made then the respondents will consider to allot the petitioner alternate land other than the land which is the subject matter of the present writ petition since the land in the present case is already allotted to respondent no.4 to 7 as project affected persons. The respondents are directed to decide such representation of the petitioner within a period of 3 weeks from today. We dispose of the present petition in terms aforestated. However, there shall be no order as to costs.